

***United States Court of Appeals
for the
District of Columbia Circuit***



**TRANSCRIPT OF
RECORD**

TRANSCRIPT OF RECORD

United States Court of Appeals for the
District of Columbia

JANUARY TERM, 1939

No. 7349

426

EDNA JULIA SMALL, APPELLANT,

vs.

UNITED STATES OF AMERICA AND ANNA EDITH
COHEN

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR
THE DISTRICT OF COLUMBIA.

FILED FEBRUARY 20, 1939

PRINTED APRIL 20, 1939

United States Court of Appeals for the District of Columbia

JANUARY TERM, 1939.

No. 7349

EDNA JULIA SMALL, APPELLANT,

vs.

UNITED STATES OF AMERICA AND ANNA EDITH
COHEN, APPELLEES.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR
THE DISTRICT OF COLUMBIA.

INDEX.

	Original	Print
Caption	a	1
Petition	1	1
Plea of defendant United States of America.....	6	6
Stipulation	7	7
Motion of Anna Edith Cohen for judgment on the pleadings ..	10	9
Motion of plaintiff for judgment	11	10
Amended plea of the defendant Anna Edith Cohen	11	10
Fiat of Justice Bailey	14	13
Judgment	15	13
Order fixing amount of appeal bond	18	16
Notice of appeal	19	17
Memorandum: Cost bond on appeal \$100—filed	19	17
Assignments of error upon appeal	19	18
Memorandum: Time to file transcript of record extended	21	19
Designation of record	22	20
Clerk's certificate	24	21

United States Court of Appeals for the District of Columbia

a. District Court of the United States for the
District of Columbia

At Law No. 88762

EDNA JULIA SMALL, *Plaintiff*,

vs.

UNITED STATES OF AMERICA AND ANNA EDITH COHEN,
Defendants.

UNITED STATES OF AMERICA,
District of Columbia, ss:

BE IT REMEMBERED, that in the District Court of the
United States for the District of Columbia, at the
City of Washington, in said District, at the times
hereinafter mentioned, the following papers were
filed and proceedings had, in the above-entitled,
cause, to wit:

1 *Petition*

Filed April 9 1937

In the United States District Court for the District of
Columbia

No. 88,762

EDNA JULIA SMALL, Belfast, Maine, *Plaintiff*,

vs.

UNITED STATES OF AMERICA, and ANNA EDITH COHEN, 91
Warrington St., Providence, R. I., *Defendants.*

The plaintiff, Edna Julia Small, for her cause of action
complains of the defendants and alleges:

I.

That the plaintiff is a citizen of the United States, and a
resident of the City of Belfast in the State of Maine.

II.

That one Nathan Houston Small enlisted in the military service of the United States on May 21, 1918, and was honorably discharged therefrom on August 8, 1919.

III.

That the said Nathan Houston Small after entry into the military service, as aforesaid, desiring to be insured against the risks of war and in order to furnish greater protection to himself and his dependents did on May 21, 1918 make application to the defendant, United States of America and was granted war risk term insurance in the amount of Ten Thousand Dollars (\$10,000.00) upon which he paid premiums to include the month of August 1919. That in the said application for insurance the said Nathan Houston Small, named and designated the plaintiff, his wife, as the beneficiary thereof. That thereafter and on the 1st day of September A. D. 1919 the said Nathan Houston Small duly converted his Ten Thousand Dollars (\$10,000.00) war risk term insurance contract into a Ten Thousand Dollar (\$10,000.00) twenty payment Government life policy which conversion was accepted by the defendant United States of America who duly issued the policy therefore, and that premiums were paid on said converted policy by the said Nathan Houston Small to include the month of August, 1936.

IV.

That at the time the Nathan Houston Small converted the said Ten Thousand Dollar war risk term contract to a Ten Thousand Dollar (\$10,000.00) twenty payment government life policy, he designated, his wife, the plaintiff as beneficiary thereof, and that the plaintiff continued at all times thereafter to be the duly designated beneficiary under the said Ten Thousand Dollar (\$10,000.00) twenty payment life government policy until the maturity of the same by the death of the insured as hereinafter alleged.

V.

That among other things, the said Ten Thousand Dollar (\$10,000.00) twenty payment government life policy issued to Nathan Houston Small by the defendant, United States

of America, provided that in the event of the insured's death while the same was in full force and effect, payment of the principal sum of Ten Thousand (\$10,000.00) would be made to the plaintiff in the manner and in accordance with the terms of the said policy.

VI.

That the insured, Nathan Houston Small in accordance with the terms of the said policy elected to have the proceeds payable to the plaintiff his beneficiary in the event of his death in the following manner to wit:

OPTION NO. 3

INSURANCE PAYABLE IN INSTALLMENTS THROUGHOUT LIFE:

The installments noted below will be payable throughout the lifetime of the designated beneficiary, but if such designated beneficiary dies before two hundred and forty such installments have been paid, the remaining unpaid monthly installments will be payable in accordance with the beneficiary provisions.

Age of Beneficiary at time of death of insured.	Amount of each monthly installment.
--	--

(Table)

That the plaintiff was born on August 28, 1892, and that at the time of the insured's death on August 25, 1936 she was forty three years of age. That under the terms of the option selected by the insured the said Ten Thousand (\$10,000.00) twenty payment life government policy became payable to the plaintiff in monthly installments of Forty Six Dollars and eighty cents (\$46.80) for each and every month from August 25, 1936.

VII.

That the said Nathan Houston Small departed this life on August 25, 1936 and that the said Ten Thousand dollar (\$10,000.00) twenty payment life policy issued by the defendant United States of America was in full force and effect on the date of his death, and that the plaintiff thereby became entitled to receive from the defendant United

States of America monthly installments of Forty
4 Six dollars and eighty cents (\$46.80) each commencing on the date of the death of the insured, Nathan Houston Small, to wit: August 25, 1936, and continuing for each and every month thereafter throughout her lifetime.

VIII.

That at the time of the death of the said Nathan Houston Small on August 25, 1936 the plaintiff was his wife and was the duly designated beneficiary under the said Ten Thousand dollar (\$10,000.00) twenty payment government life policy of Nathan Houston Small.

IX.

That the plaintiff has submitted due proof of the death of said Nathan Houston Small on August 25, 1936, to the defendant United States of America, and has demanded payment of the several sums of money payable under the terms and conditions of the said Ten Thousand dollar (\$10,000) twenty payment government life policy but that the said defendant United States of America by and through the Administrator of Veterans Affairs has failed, refused and neglected to pay the same, or any part thereof, and that a disagreement exists between the plaintiff and the United States Veterans Administration as to the plaintiff's right to recover on the said policy and has existed since April 5, 1937. Wherefore plaintiff brings this action under Section 19, of the World War Veterans Act, 1924, as amended.

X.

That the said defendant, Anna Edith Cohen resides at
91 Warrington St., in the city of Providence, State of
Rhode Island, and that she claims and pretends that
5 she is a designated beneficiary under the said Ten
Thousand dollar (\$10,000.00) twenty payment government life policy issued to Nathan Houston Small by the defendant United States of America, but that she has no lawful right or just claim or color of title to the proceeds of the said policy or any part thereof.

WHEREFORE, PLAINTIFF PRAYS:

1. That due procees of this Court issue commanding the defendants, and each of them, to appear and answer this petition.

2. That the plaintiff have and recover from the defendant, United States of America, monthly installments of Forty six Dollars and eighty cents each (\$46.80) from August 25, 1936, for each and every month thereafter until date of judgment.

3. That the plaintiff have and recover against the defendant, Anna Edith Cohen her costs and disbursements.

4. That the Court fix and allow to her attorney of record a reasonable fee in accordance with the provisions of Section 500 of the World War Veterans Act 1924, as amended.

C. L. DAWSON,

Attorney for the Plaintiff.

STATE OF MAINE,

County of Waldo, ss:

Edna Julia Small, being first duly sworn, according to law, on oath deposes and says: That she is the plaintiff in the above entitled cause; That she has read the within and foregoing petition and knows the contents thereof; That the statement of facts therein made upon her personal knowledge are true and those made upon information and belief she believes to be true.

EDNA JULIA SMALL

Subscribed and sworn to before me this 8th day of April A. D. 1937.

L. ERNEST THORNTON,

(Seal)

*Notary Public, in and for the
County of Waldo, State of
Maine*

My commission expires: May 4, 1941.

6 Personal service of the within and foregoing petition is hereby admitted this 9th day of April A. D. 1937.

LESLIE C. GARNETT,

*United States Attorney in and
for the District of Columbia.*

By J. B. COSTELLO

Spc att Dept of Justice

Plea of Defendant United States of America

Filed May 17 1938

* * *

Now comes the defendant, the United States of America, by its attorney, David A. Pine, United States Attorney in and for the District of Columbia, and for a plea to the Declaration filed herein says:

Defendant denies that on August 25, 1936, the alleged date of death of Nathan Houston Small, insured herein, Edna Julia Small, plaintiff herein, was the lawfully designated beneficiary under a policy of Government Life Insurance, K-51,672, sued upon herein, and defendant avers that on or about April 15, 1933, said insured transmitted to the U. S. Veterans Administration a paper writing designating a Change of Beneficiary under the policy of Government Life Insurance from Edna Julia Small, his wife, to Anna Edith Cohen, the said change being recorded in the Veterans Administration on May 4, 1933; and defendant further avers that Anna Edith Cohen was the lawfully designated beneficiary of the said policy of Government Life Insurance on August 25, 1936; defendant further denies that on August 25, 1936, or at any other time whatsoever, it became and was its duty and obligation to pay the plaintiff herein the sums claimed in the said Declaration, or any other sum or sums whatsoever, on account of the alleged death of the insured;

And for a further plea to the said Declaration, defendant says:

7 Defendant avers that the question of a reasonable attorney's fee is determinable by the Court under the provisions of Section 500 of the World War Veterans Act of 1924, as amended.

DAVID A. PINE

United States Attorney.

Service of a copy of the foregoing Plea acknowledged this 17 day of May, 1938.

C. L. DAWSON

Attorney for Plaintiff.

Stipulation

Filed October 13 1938

*

*

*

It is stipulated by and between Counsel for the Plaintiff and the Defendants that the sole and only issue in this case is one of law, i. e. whether the designation of the Defendant Anna Edith Cohen as the beneficiary under the converted insurance policy is permitted by the terms of the War Risk Insurance Act and the amendments thereto, and the World War Veterans Act and its amendments, that the right of trial by jury be and the same is hereby waived and that the following facts are true.

1. That Nathan Houston Small enlisted in the military service of the United States on May 21, 1918, and was honorably discharged on August 8th, 1919. That while in the military service of the United States Nathan Houston Small applied for and was granted war Risk term insurance in the amount of ten Thousand dollars for which the plaintiff Edna Julia Small, his wife, was the designated beneficiary.

2. That on September 1, 1919, Nathan Houston Small, duly converted his ten thousand dollar term insurance contract into a twenty payment government converted insurance contract and duly paid premiums thereon to include the month of August, 1936. That at the time that Nathan Houston Small made application for said ten thousand dollar converted government insurance policy he designated, the plaintiff, Edna Julia Small, his wife, as the beneficiary thereof, and that she continued to be such designated beneficiary until the 15th day of April, 1933 when Nathan Houston Small duly requested in writing to the United States Veterans Administration a change of beneficiary under said policy to the defendant, Anna Edith Cohen, which change of beneficiary was endorsed on the said \$10,000 twenty payment government life policy of Nathan Houston Small on May 4, 1933. The said change of beneficiary provided that should the said Anna Edith Cohen survive the insured and die before receiving all of the 240 monthly instalments provided for in said policy, then in that event the remainder of said instalments should be paid to the estate of the insured as the alternate beneficiary.

3. That the said ten thousand dollar twenty payment government converted policy issued to Nathan Houston Small, contained the following language relative to change of beneficiaries under the said policy:

"The insured shall have the right at any time, and from time to time, and without the consent or knowledge of the beneficiary, to change the beneficiary under this policy within the class permitted by the War Risk Insurance Act or any amendment or supplement thereto. Every change of beneficiary must be made by notice, signed by the insured, to the Bureau of War Risk Insurance at its office in Washington, D. C. (accompanied by the policy for an indorsement of the change thereon by the said Bureau) and shall not take effect unless such change is indorsed on the policy. After such indorsement, the change shall be deemed to have been made as of the date the Insured signed said written notice of change, whether the insured be living at the time of said indorsement, or not: provided, however, that any payment made to a beneficiary of record before notice of change of beneficiary has been received and recorded by the said Bureau shall not be made again to the changed beneficiary. The Insured may also exercise any right or privilege given under the provisions of this policy without the consent of the beneficiary. An original designation of a beneficiary may be made by last will and testament, but a change of beneficiary made by last will and testament shall not be valid."

9 | 4. That prior to May 21, 1918 the Plaintiff, Edna Julia Small, and Nathan Houston Small were lawfully married and that they continued to live together as husband and wife until the death of Nathan Houston Small on August 25, 1936.

15. That the Defendant, Anna Edith Cohen, is not now and never was related to the insured either by blood or marriage, or in any way whatsoever, nor did they or either of them stand in loco parentis toward the other.

6. That prior to the institution of this suit, the plaintiff filed a claim for the insurance benefits sued upon herein with the Veterans Administration, and that the claim was denied and an award was made in favor of the defendant, Anna Edith Cohen.

7. That Nathan Houston Small died on August 25, 1936 at which time premiums had been paid on the said insurance policy.

C. L. DAWSON

Attorney for Plaintiff

J EDWARD BURROUGHS JR

WILLIAM P ARNOLD

Attorneys for Defendant

Anna Edith Cohen

DAVID A. PINE

*Attorney for United States of
America.*

per J. B. C.

Dated at Washington, D. C. this 12th day of October, 1938.

10 *Motion of Anna Edith Cohen for Judgment on the
Pleadings.*

Filed October 18 1938

*

*

*

Comes now the Defendant, Anna Edith Cohen, by her Attorneys, J. Edward Burroughs, Jr. and William P. Arnold, and moves the Court to enter a judgment on the pleadings in favor of the Defendant, Anna Edith Cohen, and to award a reasonable attorney's fee for counsel for this defendant, and for reason therefor says:

1. That on the 13th day of October, 1938, there was filed in this cause a Stipulation executed by Counsel for the Plaintiff and the Defendants, the United States of America and Anna Edith Cohen, whereby it was agreed that the sole and only issue in the case is one of law, i. e. whether the designation of the Defendant, Anna Edith Cohen, as the beneficiary under the converted insurance policy is permitted by the terms of the War Risk Insurance Act and the amendments thereto and the World War Veterans Act and the amendments thereto, the said Anna Edith Cohen never having been related to the insured either by blood or marriage or in any way whatsoever, nor did they or either of them stand in loco parentis toward the other.

2. The question of law involved herein as above set forth was the subject of a demurrer filed on behalf of the Plaintiff to the plea of the Defendant, Anna Edith Cohen, on May 27, 1938; the same was argued and submitted on June 17, 1938, and on the 24th day of June, 1938, Mr. Justice Letts overruled the demurrer.

3. The action of the Court in overruling the demurrer involving the legal question which is the only issue in the case established the law of the case on this point.

J EDWARD BURROUGHS JR
WILLIAM P. ARNOLD

Attorneys for the Defendant, Anna Edith Cohen.

11 *Motion of Plaintiff for Judgment.*

Filed November 17 1938

Comes now the Plaintiff Edna Julia Small in the above entitled cause and upon the basis of the agreed statement of facts entered into by the parties hereto moved for judgment in favor of the plaintiff upon the law and the fact.

C L DAWSON
Attorney for the Plaintiff.

Amended Plea of the Defendant Anna Edith Cohen

Filed December 9 1938

The answer of Anna Edith Cohen to the petition exhibited against her in the above entitled cause respectfully represents to the Court as follows:

1 & 2.

Answering paragraphs 1 and 2 of the Petition this defendant admits the allegations contained therein.

3.

Answering paragraph 3 of the petition defendant admits the allegations therein contained but she has not sufficient

information upon which to base any belief as to the motive which prompted the said Nathan Houston Small to make application for the insurance policy mentioned therein.

4.

Answering the allegations of paragraph 4 of the petition defendant admits that at the time the said Nathan Houston Small converted his said War Risk Term policy, he designated his wife, the plaintiff, as beneficiary thereof, but the defendant denies that the plaintiff continued
12 at all times thereafter to be the duly designated beneficiary under the said converted policy until the maturity of the same by the death of the insured, and calls for strict proof thereof.

5.

Defendant denies the allegations contained in paragraph 5 of the petition.

6.

Answering paragraph 6 defendant admits that the said Nathan Houston Small elected to have the proceeds of the policy payable to his beneficiary as therein alleged but denies that the plaintiff was the beneficiary of the policy at the date of the death of the insured. Further answering paragraph 6 defendant has no knowledge upon which to base a belief as to the birth and age of the plaintiff and denies each and every other allegation of paragraph 6.

7.

Defendant admits that the said Nathan Houston Small departed this life on August 25, 1936, and that the said Ten Thousand Dollar twenty payment life policy issued by the United States of America was in full force and effect on the date of his death, but defendant denies that the plaintiff thereby became entitled to receive from the defendant United States of America, monthly instalments of Forty-six Dollars and Eighty Cents (\$46.80) or in any amount whatsoever.

8.

Answering the allegations of paragraph 8 of the petition defendant admits that the plaintiff was the wife of the said

Nathan Houston Small at the time of his death but denies that the plaintiff was the duly designated beneficiary under the said Ten Thousand Dollar (\$10,000.) twenty payment Government life policy of Nathan Houston Small.

13

9.

Defendant admits the allegations of paragraph 9.

10.

Answering paragraph 10 the defendant admits the allegations thereof insofar as they pertain to her residence and the fact that she claims and is the designated beneficiary under the said Ten Thousand Dollar (\$10,000.) twenty payment Government life policy issued to Nathan Houston Small by the defendant, United States of America. The other allegations of paragraph 10 are merely conclusions and do not require a response thereto.

Further answering the allegations of the petition defendant says that on, to-wit, the 15th day of April, 1933, the said Nathan Houston Small on Veterans Administration form No. 724 directed the United States of America by and through the Administrator of Veterans affairs to change the beneficiary of the said Ten Thousand Dollar (\$10,000.) twenty payment Government policy substituting the defendant, Anna Edith Cohen, in the place of the plaintiff, Edna Julia Small, as beneficiary of said policy; that said order to change the beneficiary of said policy was accepted by the Administrator of Veterans affairs and on the 4th day of May, 1933, an endorsement was placed upon the said policy showing that this defendant had been substituted as beneficiary thereof and the said policy was subsequently delivered to this defendant for safe keeping.

Defendant further alleges that the said life policy has been in her continuous possession since the change of beneficiary as aforesaid, and that the change of beneficiary up until the time of the death of the said Nathan Houston Small stood unrevoked and in full force and effect; and that at the time of the death of the insured aforesaid this defendant was the sole and only beneficiary designated in the said policy and is the sole and only person entitled to receive the benefits and payments thereunder.

14 Further answering the said petition defendant alleges that upon the death of the said Nathan Houston Small this defendant, as the duly designated beneficiary of the said policy, applied to the United States of America acting through the Administrator of Veterans affairs, for payment to her under the said policy; that the plaintiff herein likewise made application for payment and that after due consideration thereof the Administrator of Veterans affairs determined that this defendant was entitled as the duly designated beneficiary to receive the payments under the said policy.

Having fully responded to the allegations of the petition defendant prays that judgment be entered in her behalf with allowance for her proper costs and disbursements in this behalf laid out and that the Court fix and allow to her attorneys of record a reasonable fee as provided by law.

J EDWARD BURROUGHS JR
WILLIAM P ARNOLD
EVERARD APPLETON
Attorneys for Defendant

Consent

C L DAWSON
Attorney for Plaintiff

DAVID A. PINE
Attorney for United States of America

Let this Amendment be filed this 9th day of December, 1938.

JENNINGS BAILEY
Justice.

15 *Judgment*

Filed December 9 1938

*

*

*

The above entitled cause came on to be heard on the 17th day of November, 1938, upon the motions of the Plaintiff and the Defendant, Anna Edith Cohen, for judgment

on the pleadings and for the allowance of counsel fee. The Plaintiff and the Defendant were represented by Counsel, and it appearing from the pleadings that Nathan Houston Small served in the World War and was granted a Ten Thousand Dollar (\$10,000.) contract of War Risk Term insurance on which premiums were paid to include August, 1919; that effective September 1, 1919, he converted said Ten Thousand Dollar (\$10,000.) War Risk Term insurance contract to a twenty payment government converted insurance contract and duly paid premiums thereon to include the month of August, 1936; that the said Nathan Houston Small died August 25, 1936; that the original designated beneficiary of said War Risk Term Insurance was Edna Julia Small, his wife, and that at some time prior to his death he filed a Change of Beneficiary, dated April 15, 1933, changing the beneficiary from the Plaintiff, Edna Julia Small, his wife, to Anna Edith Cohen, a person who was never related to the insured, Nathan Houston Small, either by blood or marriage, or in any way whatsoever, and who is one of the defendants herein, with provision that insurance be payable in two hundred and forty (240) monthly installments, to the said Anna Edith Cohen in event she survived insured and in event she did not survive insured,

16 or surviving insured should die before receiving all of said 240 installments, that such installments would be payable to the estate of the insured, and that at the time of such Change of Beneficiary the said insured, Nathan Houston Small, was mentally competent and capable of understanding his action in changing the beneficiary so that the change was valid and that the said insurance was payable at the time of death of said insured in the amount of Ten Thousand Dollars (\$10,000) in monthly installments; and it appearing that the defendant, United States of America, had refused to pay the claim of this plaintiff which it held was payable to the defendant, Anna Edith Cohen, as designated beneficiary, thereby giving this Court jurisdiction of this action which was timely filed; and it further appearing that the parties hereto by their respective counsel filed herein on the 12th day of October, 1938, a stipulation wherein it was determined that the sole and only issue in the case is whether the designation of the

Defendant, Anna Edith Cohen, as the beneficiary under the converted insurance policy is permitted by the terms of the War Risk Insurance Act and the Amendments thereto and the World War Veterans Act and its amendments, the said Anna Edith Cohen never having been related to the insured either by blood or marriage or in any way whatsoever, nor did the said Anna Edith Cohen nor the insured stand in loco parentis toward the other, and the Court having determined that such change of Beneficiary was permitted under the War Risk Insurance Act and the amendments thereto and the World War Veterans Act and its amendments, and the Court having further determined that J. Edward Burroughs, Jr., William P. Arnold and Everard Appleton as attorneys of record for the defendant, Anna Edith Cohen, are entitled to a reasonable fee for their services;

17 IT IS, THEREFORE, ORDERED AND ADJUDGED that the Defendant, Anna Edith Cohen, as the legally designated beneficiary, do have and recover of the Defendant, United States of America, installments of the insurance herein sued upon, to be paid at a rate to be computed on a monthly basis by the Veterans Administration in accordance with the terms of the policy beginning on August 25, 1936, to and including the monthly anniversary date immediately preceding the date of hearing, representing the accrued installments under policy K-51,672 in the principal sum of Ten Thousand (\$10,000.) Dollars on the life of Nathan Houston Small, and being the insurance claimed by the Plaintiff, Edna Julia Small, who is entitled to nothing as alleged beneficiary.

AND IT IS FURTHER ORDERED AND ADJUDGED that the Defendant, United States of America, deduct ten per centum (10%) of the amount herein recovered by said defendant, and to be paid in future installments because of the entering of this judgment, and pay the same to J. Edward Burroughs, Jr., William P. Arnold. and Everard Appleton of Washington, D. C., attorneys of record for the Defendant, as their reasonable fee for services rendered in this action.

And It Is Further Ordered and Adjudged that Anna Edith Cohen, Defendant, do have and recover of the Plaintiff, Edna Julia Small, the proper costs herein incurred by

said Defendant, Anna Edith Cohen, and for which let execution issue.

This 9th day of December, 1938.

JENNINGS BAILEY

Justice

*District Court of the United States
for the District of Columbia.*

Approved as to form:

C. L. DAWSON

Attorney for Plaintiff

DAVID A. PINE, per J.B.C.

Attorney for United States of America

J EDWARD BURROUGHS JR

WILLIAM P ARNOLD

Attorneys for Defendant,

Anna Edith Cohen

18 *Order Fixing Amount of Appeal Bond.*

Filed December 19 1938

*

*

*

The above entitled action having come on for hearing before the Court on the 17th day of November, 1938, and the plaintiff appearing by counsel C. L. Dawson, and the defendant, Anna Edith Cohen, appearing by J. Edward Burroughs Jr. and William P. Arnold, and the defendant, United States of America by the United States Attorney for the District of Columbia, and the Court having heard the arguments of counsel does sustain the motion of the defendant, Anna Edith Cohen for judgment, and at the same time and place counsel for the plaintiff Edna Julia Small made an oral motion requesting the Court to reduce the bond on appeal to the amount of One Hundred dollars, which motion was granted by the Court, there being no objection by the counsel for the respective defendants, and judgment in this cause having been entered on the 9th day of December 1938 in favor of Anna Edith Cohen, defendant, and against the plaintiff, and the defendant United States

of America, and the plaintiff Edna Julia Small having announced her intention of appealing from the said judgment to the United States Court of Appeals for the District of Columbia, it is this 19th day of December, A. D. 1938,

Ordered, that the amount of the bond on appeal to be filed by the plaintiff, Edna Julia Small be and the same is hereby fixed in the amount of One Hundred Dollars (\$100.00) in accordance with subdivision (c) of Rule 73 of the Rules of Civil Procedure.

JENNINGS BAILEY,
Justice.

No objection and approved as to form:

J. EDWARD BURROUGHS, JR.
Attorney for the Defendant,
Anna Edith Cohen

DAVID A. PINE,
Attorney for the defendant
United States of America.

19

Notice of Appeal.

Filed December 28 1938

*

*

*

Notice is hereby given this 28th day of December, A. D. 1938, that Edna Julia Small, the plaintiff in the above entitled action hereby appeals to the United States Court of Appeals for the District of Columbia from the judgment of this Court entered on the 9th day of December, A. D. 1938, in favor of Anna Edith Cohen, said defendant, and against the plaintiff Edna Julia Small, and the defendant, United States of America.

C L DAWSON
Attorney for the Plaintiff.

Memorandum

December 28-1938.

Cost Bond on appeal \$100—filed.

Assignments of Error Upon Appeal.

Filed December 28 1938

*

*

*

Comes now the plaintiff in the above entitled action by her attorney of record, and assigns for error that the Court erred in each of the following particulars.

Assignment of Error No. 1.

That the Court erred in sustaining the motion of the defendant Anna Edith Cohen for judgment in her favor, and against the plaintiff and the defendant United States of America, based upon the agreed statement of facts entered into by the plaintiff and the defendants.

20

Assignment of Error No. 2.

That the Court erred in not granting the motion for judgment in favor of the plaintiff Edna Julia Small based upon the agreed statement of facts entered into by the plaintiff and the defendants herein.

Assignment of Error No. 3.

That the Court erred in its ruling that the defendant Anna Edith Cohen was a designated beneficiary under the government converted insurance policy of Nathan Houston Small, and a person entitled to take the proceeds of the said policy upon his death for the reason that the agreed statement of facts entered into by the parties upon which judgment was pronounced conclusively shows that Anna Edith Cohen, said defendant, was not a person within the permitted class of beneficiaries under the provisions of the government insurance policy issued to Nathan Houston Small, and hereupon sued upon, or within the permitted class of beneficiaries under the provisions of the War Risk Insurance Act or its amendments, or the World War Veterans Act and its amendments to whom a valid change of beneficiary could be made under the terms of the said policy, the War Risk Insurance Acts and its amendments, and the World War Veterans Act and its amendments.

Assignment of Error No. 4.

That the Court erred in its ruling that the plaintiff Edna Julia Small was not the designated beneficiary under the

government converted insurance policy of Nathan Houston Small, her husband, at the time of his death on August 23, 1936, for the reason that she was so designated, and no valid change of beneficiary from the plaintiff to any person was ever made, and particularly to Anna Edith Cohen, said defendant, during the lifetime of the insured Nathan Houston Small.

21

Assignment of Error No. 5.

That the Court erred in entering judgment in favor of the defendant, Anna Edith Cohen, and against the plaintiff, and the defendant, United States of America, for the reason that under the agreed statement of facts, upon which said judgment is predicated, the plaintiff was entitled to judgment in her favor as a matter of law.

C. L. DAWSON

Attorney for the Plaintiff.

Service of the within and foregoing Assignment of Errors and receipt of a copy is hereby admitted this 28th day of December A. D. 1938.

WILLIAM P ARNOLD

J. EDWARD BURROUGHS JR.

*Attorneys for the defendant,
Anna Edith Cohen.*

DAVID A. PINE

*United States Attorney for the
District of Columbia, Attorney
for the defendant, United
States of America.*

Memorandum

February 3-1939.

Time to file transcript of record in United States Court of Appeals, extended to and including February 20, 1939.

Designation of Record.

Filed January 30 1939

*

*

*

Comes now the plaintiff in the above entitled cause by her counsel of record and designates the part of the record which she desires to have included in the record on appeal, said parts being sufficient for the determination of the question of law raised on appeal.

1. Complaint
2. Answer of the defendant, United States of America.
3. Amended Answer of the defendant, Anna Edith Cohen.
4. Agreed stipulation of facts signed by the parties.
5. Motion of the defendant Anna Edith Cohen for Judgment.
6. Motion of the plaintiff, Edna Julia Small for Judgment.
7. Judgment.
8. Notice of Appeal.
9. Order reducing amount of Bond on Appeal.
10. Bond on Appeal.
11. Assignments of error.
12. This designation.

The above being all of the papers and documents necessary for the determination of the question of law on Appeal in this cause, such question arising from the undisputed facts as stipulated by the parties.

C L DAWSON

Attorney for the Plaintiff.

Personal service of the within and foregoing Designation of Record is hereby admitted this 27 day of January, A. D. 1939.

DAVID A. PINE

*United States Attorney for the
District of Columbia, Attorney
for the Defendant, United
States of America.*J. EDWARD BURROUGHS JR.
WILLIAM P ARNOLD*Attorneys for the Defendant
Anna Edith Cohen.*

24 District Court of the United States
For the District of Columbia

UNITED STATES OF AMERICA,
District of Columbia, ss:

I, Charles E. Stewart, Clerk of the District Court of the United States for the District of Columbia, hereby certify the foregoing pages numbered from 1 to 23, both inclusive, to be a true and correct transcript of the record, according to directions of counsel herein filed, copy of which is made part of this transcript, in cause No. 88762 at Law, wherein Edna Julia Small is Plaintiff and United States of America, and Anna Edith Cohen are Defendants, as the same remains upon the files and of record in said Court.

In Testimony Whereof, I hereunto subscribe my name and affix the seal of said Court, at the City of Washington, in said District, this 20th day of February, 1939.

C. E. STEWART,
Clerk.

(Seal)

Endorsed on cover: No. 7349. Small, Appellant, vs. Cohen. United States Court of Appeals for the District of Columbia Filed Feb 20 1939 Joseph W. Stewart, Clerk.

IN THE
United States Court of Appeals for the
District of Columbia

JANUARY TERM, 1939.

No. 7349.

EDNA JULIA SMALL,
APPELLANT,

VS.

UNITED STATES OF AMERICA and ANNA
EDITH COHEN,
APPELLEES.

BRIEF FOR THE APPELLANT.

Appeal from the District Court of the United States
for the District of Columbia.

C. L. DAWSON,
Attorney for Appellant,
Washington, D. C.

I N D E X

	PAGE
Statement of the Case.....	1
Pertinent Statutes and Regulations.....	5
Assignments of Error.....	8
Argument and Brief.....	10
Conclusion	17

TABLE OF CITATIONS.

Amendment of July 3, 1930, Section 22.....	6, 17
Amendment to the World War Veterans' Act of May 29, 1928.....	11, 17
Caminetti v. United States, 242 U. S. 479, 61 L. Ed. 442	14
Elliott vs. United States, 271 Fed. 1001.....	10
Hamilton v. Rathbone, 175 U. S. 414, 44 L. Ed. 219	15
Howard vs. United States, 2 Fed. (Sec.) 170.....	10
Lewis v. United States, 56 Fed. (2) 563.....	16
Mackenzie v. Hare, 238 U. S. 299, 60 L. Ed. 297...	15
Succession of Lynch vs. United States, 17 Fed. Supp. 974	10
Succession of Lynch vs. United States, 17 Fed. 974	10
U. S. Code Annotated.....	16
World War Veterans' Act, Section 300, 38 U. S. C. A. 511, 512.....	5, 8, 11, 12, 13
301, 38 U. S. C. A. 512.....	6, 13
59 C. J. 1034.....	14

IN THE
United States Court of Appeals for the
District of Columbia

JANUARY TERM, 1939.

No. 7349.

EDNA JULIA SMALL,
APPELLANT,
vs.
UNITED STATES OF AMERICA and ANNA
EDITH COHEN,
APPELLEES.

BRIEF FOR THE APPELLANT.

Appeal from the District Court of the United States
for the District of Columbia.

Statement of the Case.

The appellant, hereinafter referred to as the plaintiff, brought this action to recover upon the War Risk Converted Insurance Contract of her late husband, Nathan Houston Small (R. 1). The Complaint alleges

that Nathan Houston Small applied for Ten Thousand Dollars (\$10,000) of War Risk Insurance while in the military service of the United States and that he designated the plaintiff, his wife, as the beneficiary thereof. Complaint further alleges that this insurance was converted into a Ten Thousand Dollar (\$10,000) twenty-payment government life policy on September 1, 1919, (R. 2) and that premiums were paid until the death of Nathan Houston Small on August 25, 1936 (R. 4). It is further alleged that the appellee, Anna Edith Cohen, hereinafter referred to as a defendant, claimed some right or title under the terms of the policy. Both defendants, United States of America and Anna Edith Cohen, answered in the cause. There is no dispute as to the facts in the case. For this reason a Stipulation was entered into as to the material facts (R. 7).

The Stipulation shows that on September 1, 1919, Nathan Houston Small converted his Ten Thousand Dollar (\$10,000) Term Insurance Contract into a Twenty Payment Government Converted Insurance Contract and paid premiums thereon to include the month of August, 1936; that he designated the plaintiff, Edna Julia Small, his wife, as the beneficiary thereof, and that she continued to be such beneficiary until the 15th day of April, 1933, when Nathan Houston Small duly requested in writing to the United States Veterans Administration a change of beneficiary under said policy to the defendant, Anna Edith Cohen, which change of beneficiary was endorsed on the said policy on May 4, 1933.

The Stipulation further shows (R. 8) that under the terms of the policy the insured shall have the right at any time, and from time to time, and without the consent or knowledge of the beneficiary, to change the beneficiary under this policy within the class permitted by the War Risk Insurance Act or any amendment or supplement thereto. Every change of beneficiary must be made by notice, signed by the insured, to the Bureau of War Risk Insurance at its office in Washington, D. C. (accompanied by the policy for an indorsement of the change thereon by the said Bureau) and shall not take effect unless such change is indorsed on the policy. After such indorsement, the change shall be deemed to have been made as of the date the insured signed said written notice of change, whether the insured be living at the time of said indorsement, or not; provided, however, that any payment made to a beneficiary of record and recorded by the said Bureau shall not be made again to the changed beneficiary. The insured may also exercise any right or privilege given under the provisions of this policy without the consent of the beneficiary. An original designation of a beneficiary may be made by last will and testament, but a change of beneficiary made by last will and testament shall not be valid.

The Stipulation further shows that the plaintiff, Edna Julia Small, and Nathan Houston Small were lawfully married prior to May 21, 1918, and that they continued to live together as husband and wife until his death on August 25, 1936. The Stipulation further shows that the defendant, Anna Edith Cohen, is not

now and never was related to the insured either by blood or marriage or in any way whatsoever did they or either of them stand in *loco parentis* toward the other. Jurisdiction of the court is invoked under Paragraph 6 of the Stipulation which shows that the claim of the plaintiff was denied by the Veterans Administration prior to the institution of suit and there is no dispute between the defendant, United States of America, and the plaintiff as to whether the insurance was in force on the date of the death of the insured, but the government admits that the premiums were paid until the date of his death.

The defendant, Anna Edith Cohen, moved for judgment on the pleadings (R. 9). The plaintiff moved for judgment upon the basis of the agreed statements of facts. The court below sustained the motion of the defendant, Anna Edith Cohen, and ordered judgment in her favor for the installments accrued on the Ten Thousand Dollar (\$10,000) Insurance Contract (R. 13, 14, 15, 16). From this judgment, the plaintiff has appealed.

The sole question upon appeal is whether the change of beneficiary made by Nathan Houston Small in favor of his friend Anna Edith Cohen is a valid change of beneficiary from the plaintiff who was within the permitted class of beneficiaries to Anna Edith Cohen, a person admittedly not within the permitted class of beneficiaries.

Pertinent Statutes and Regulations.

The World War Veterans' Act, Section 300, 38 U. S. C. A. 511:

“In order to give to every commissioned officer and enlisted man and to every member of the Army Nurse Corps (female) and of the Navy Nurse Corps (female) when employed in active service under the War Department or Navy Department protection for themselves and their dependents, the United States, upon application to the bureau and without medical examination, shall grant United States Government life insurance (converted insurance) against the death or total permanent disability of any such person in any multiple of \$500, and not less than \$1,000 or more than \$10,000, upon the payment of the premiums as hereinafter provided. Such insurance must be applied for within one hundred and twenty days after enlistment or after entrance into or employment in the active service and before discharge or resignation: Provided, That any member of the reserve forces whose application was accepted at a time when he was in attendance at a military or naval training camp or station, and from whom premiums were collected and who becomes or has become totally or permanently disabled, or dies or has died, shall be deemed to have made valid application therefor. This proviso shall not authorize the granting of more than \$10,000 insurance to any one person: Provided further, That each officer and enlisted man of the Coast Guard who is serving on active duty at the time of the passage of this amendatory Act, or who subsequent thereto enters the Coast Guard Service, shall be granted insurance in accordance with the terms of this section upon application within one hundred and twenty days of the passage of this amendatory Act, or date of enlistment or entry into the Coast Guard, whichever is the later date, and before retirement, discharge, or resignation.

The insurance shall be payable only to a spouse, child, grandchild, parent, brother, sister, uncle aunt, nephew, niece, brother-in-law, or sister-in-law, or to any or all of them, and also during total and permanent disability to the injured person.”

• • •

301, 38 U. S. C. A. 512: * * * “The insurance except as provided herein shall be payable in two hundred and forty equal monthly instalments: Provided, That when the amount of an individual monthly payment is less than \$5, such amount may in the discretion of the director be allowed to accumulate without interest and be disbursed annually. Provisions for maturity at certain ages, for continuous installments during the life of the insured or beneficiaries, or both, for cash, loan, paid up and extended values, dividends from gains and savings, and such other provisions for the protection and advantage of and for alternative benefit to the insured and the beneficiaries as may be found to be reasonable and practicable, may be provided for in the contract of insurance, or from time to time by regulations. All calculations shall be based upon the American Experience Table of Mortality and interest at $3\frac{1}{2}$ per centum per annum, except that no deduction shall be made for continuous installments during the life of the insured in case his total and permanent disability continues more than two hundred and forty months. *Subject to regulations, the insured shall at all times have the right to change the beneficiary or beneficiaries without the consent of such beneficiary or beneficiaries, but only within the classes herein provided.*” • • •

Amendment of July 3, 1930, Section 22:

“In case where an insured whose yearly renewable term insurance has matured by reason of total permanent disability is found and declared to be no longer permanently and totally disabled,

and where the insured is required under regulations to renew payment of premiums on said term insurance, and where this contingency is extended beyond the period during which said yearly renewable term insurance otherwise must be converted, there shall be given such insured an additional period of two years from the date on which he is required to renew payment of premiums in which to reinstate or convert said term insurance as hereinbefore provided: Provided, That where the time for conversion has been extended under the second paragraph of this section because of the mental condition or disappearance of the insured, there shall be allowed to the insured an additional period of two years from the date on which he recovers from his mental disability or reappears in which to convert.

“The insurance, except as provided herein, shall be payable in two hundred and forty equal monthly installments: Provided, That when the amount of an individual monthly payment is less than \$5, such amount may in the discretion of the director be allowed to accumulate without interest and be disbursed annually. Provisions for maturity at certain ages, for continuous installments during the life of the insured or beneficiaries, or both, for refund of premiums, cash, loan, paid-up and extended values, dividends from gains and savings, and such other provisions for the protection and advantage of and for alternative benefits to the insured and the beneficiaries as may be found to be reasonable and practicable, may be provided for in the contract of insurance, or from time to time by regulations. All calculations shall be based upon the American Experience Table of Mortality and interest at $3\frac{1}{2}$ per centum per annum, except that no deduction shall be made for continuous installments during the life of the insured in case his total and permanent disability continues more than two hundred and forty months. *Subject to regulations, the insured shall at all times have the*

right to change the beneficiary or beneficiaries without the consent of such beneficiary or beneficiaries, but only within the classes herein provided."

38 U. S. C. A. 511, 512.

Assignments of Error.

(R. 18)

Assignment of Error No. 1.

That the Court erred in sustaining the motion of the defendant Anna Edith Cohen for judgment in her favor, and against the plaintiff and the defendant United States of America, based upon the agreed statement of facts entered into by the plaintiff and the defendants.

Assignment of Error No. 2.

That the Court erred in not granting the motion for judgment in favor of the plaintiff Edna Julia Small based upon the agreed statement of facts entered into by the plaintiff and the defendants herein.

Assignment of Error No. 3.

That the Court erred in its ruling that the defendant Anna Edith Cohen was a designated beneficiary under the government converted insurance policy of Nathan Houston Small, and a person entitled to take the proceeds of the said policy upon his death for the reason that the agreed statement of facts entered into by the parties upon which judgment was pronounced

conclusively shows that Anna Edith Cohen said defendant, was not a person within the permitted class of beneficiaries under the provisions of the government insurance policy issued to Nathan Houston Small, and hereupon sued upon, or within the permitted class of beneficiaries under the provisions of the War Risk Insurance Act or its amendments to whom a valid change of beneficiary could be made under the terms of the said policy, the War Risk Insurance Acts and its amendments, and the World War Veterans Act and its amendments.

Assignment of Error No. 4.

That the Court erred in its ruling that the plaintiff Edna Julia Small was not the designated beneficiary under the government converted insurance policy of Nathan Houston Small, her husband, at the time of his death on August 25, 1936, for the reason that she was so designated, and no valid change of beneficiary from the plaintiff to any person was ever made, and particularly to Anna Edith Cohen, said defendant, during the lifetime of the insured Nathan Houston Small.

Assignment of Error No. 5.

That the Court erred in entering judgment in favor of the defendant, Anna Edith Cohen, and against the plaintiff, and the defendant, United States of America, for the reason that under the agreed statement of facts, upon which said judgment is predicated, the plaintiff was entitled to judgment in her favor as a matter of law.

ARGUMENT AND BRIEF.

The assignments of error will be collectively considered.

The policy issued to Nathan Houston Small by the defendant, United States of America, provided that the insured shall have the right at any time, and from time to time, and without the consent or knowledge of the beneficiary to change the beneficiary under the policy within the class permitted by the War Risk Insurance Act or any amendment or supplement thereto. The permitted class of beneficiaries were limited to a spouse, child, grandchild, parent, brother, sister, uncle, aunt, nephew, niece, brother-in-law or sister-in-law by the provisions of section 300 of the World War Veterans Act. It is conceded that the defendant, Anna Edith Cohen, who was no more than a friend of the insured, is not within this permitted class of beneficiaries. It is the contention of the plaintiff that the designation of defendant, Cohen, as a beneficiary did not operate to effect a change of beneficiary but such attempted change was null and void. This is unquestionably the rule as far as the change of beneficiary under War Risk Yearly Renewable Term Insurance.

Succession of Lynch vs. United States, 17 Fed. Supp. 974.

Howard vs. United States, 2 Fed. (Sec.) 170.

Elliott vs. United States, 271 Fed. 1001.

This in fact has been the consistent ruling of the Bureau of War Risk Insurance and its successors since insurance was issued by the Government. The defend-

ant Cohen claims, however, that the designation of herself as beneficiary under the insurance contract is permitted by virtue of an amendment to the World War Veterans Act of May 29, 1928. In order to determine this question, the amendment to the act of May 29, 1928, must be closely scrutinized.

Prior to May 29, 1928, Section 300 of the World War Veterans Act read as follows (38 U. S. C. A. 511):

“In order to give to every commissioned officer and enlisted man and to every member of the Army Nurse Corps (female) and of the Navy Nurse Corps (female) when employed in active service under the War Department or Navy Department protection for themselves and their dependents, the United States, upon application to the Bureau and without medical examination, shall grant United States Government life insurance (converted insurance) against the death or total permanent disability of any such person in any multiple of \$500, and not less than \$1,000 or more than \$10,000, upon the payment of the premiums as hereinafter provided. Such insurance must be applied for within one hundred and twenty days after enlistment or after entrance into or employment in the active service and before discharge or resignation: Provided, That any member of the reserve forces whose application was accepted at a time when he was in attendance at a military or naval training camp or station, and from whom premiums were collected, and who becomes or has become totally or permanently disabled, or dies or has died, shall be deemed to have made valid application therefor. This proviso shall not authorize the granting of more than \$10,000 insurance to any one person: Provided, further, That each officer and enlisted man of the Coast Guard who is serving on active duty at the time of the passage of this amendatory Act, or who subse-

quent thereto enters the Coast Guard Service, shall be granted insurance in accordance with the terms of this section upon application within one hundred and twenty days of the passage of this amendatory Act, or date of enlistment or entry into the Coast Guard, whichever is the later date, and before retirement, discharge or resignation.

The insurance shall be payable only to a spouse, child, grandchild, parent, brother, sister, uncle, aunt, nephew, niece, brother-in-law, or sister-in-law, or to any or all of them, and also during total and permanent disability to the injured person.

Where a beneficiary at the time of designation by the insured is within the permitted class of beneficiaries and is the designated beneficiary at the time of the maturity of the insurance because of the death of the insured, such beneficiary shall be deemed to be within the permitted class even though the status of such beneficiary shall have been changed.

The United States shall bear the expenses of administration and the excess mortality and disability cost resulting from the hazards of war. The premium rates shall be the net rates based upon the American Experience Table of Mortality and interest at $3\frac{1}{2}$ per centum per annum. This section shall be deemed to be in effect as of June 7, 1924."

On May 29, 1928, Section 300 was changed to read as follows:

"Yearly renewable term insurance shall be payable only to a spouse, child, grandchild, parent, brother, sister, uncle, aunt, nephew, niece, brother-in-law, sister-in-law, or to any or all of them and also during total or permanent disability to the injured person."

Attention of the court is directed to the fact that the words "the insurance" in the act prior to May 29, 1928, are changed to "Yearly renewable term insur-

ance." This paragraph is the basis for the contention that the change of beneficiary in favor of Anna Edith Cohen was valid. There might be some grounds for that contention save for the provisions of Section 301 which were re-enacted on the same date as the amendment to Section 300. Section 301 of the World War Veterans Act relates to converted insurance and in the paragraph relating entirely to converted insurance we find the following language inserted by Congress (38 U. S. C. A. 512):

"The insurance except as provided herein shall be payable in two hundred and forty equal monthly installments: Provided, That when the amount of an individual monthly payment is less than \$5, such amount may in the discretion of the director be allowed to accumulate without interest and be disbursed annually. Provisions for maturity at certain ages, for continuous installments during the life of the insured or beneficiaries, or both, for cash, loan, paid up and extended values, dividends from gains and savings, and such other provisions for the protection and advantage of and for alternative benefit to reasonable and practicable, may be provided for in the contract of insurance, or from time to time by regulations. All calculations shall be based upon the American Experience Table of Mortality and interest at $3\frac{1}{2}$ per centum per annum, except that no deduction shall be made for continuous installments during the life of the insured in case his total and permanent disability continues more than two hundred and forty months. *Subject to regulations, the insured shall at all times have the right to change the beneficiary or beneficiaries, but only within the classes herein provided.*"

It is to be noted that while Congress struck out the permitted class as far as the designation of original

beneficiaries were concerned for converted insurance, it expressly provided in the same amended act that no change of a beneficiary could be made under a converted insurance policy except to a person within the permitted class of beneficiaries under the World War Veterans Act.

Thus, while it may have been possible to originally designate a person for converted insurance outside the permitted class after the May 29, 1928, amendment, a change of beneficiary was expressly prohibited unless such person was within the permitted class of beneficiaries.

Counsel for defendant, Cohen, may attempt to refer to the Reports of the Committee of Congress handling the May 29, 1928, amendment. But where there is no ambiguity in the statute resort cannot be had to the Committee reports.

59 C. J. 1034.

The name given to a Congressional enactment by way of a designation or description in the Act or the report of the Committee accompanying the introduction of a bill into the House of Representatives cannot change the plain implication of the Statute.

Caminetti v. United States, 242 U. S. 479, 61 L. Ed. 442.

Where the language is plain, and admits of no more than one meaning, the duty of interpretation does not

arise and the rules which are to aid doubtful meanings need no discussion.

Hamilton v. Rathbone, 175 U. S. 414, 44 L. Ed. 219.

Whatever was said in the debates on the bill in the reports concerning it preceding the enactment, or during its enactment must give way to the language or rather all of the reasons that induced its enactment and all of its purposes must be supposed to be satisfied and expressed by its words, and it makes no difference that in discussions some may have been given more prominence than others, seemed more urgent, and insistent than others, presented the mischief to be remedied more conspicuously than others.

Mackenzie v. Hare, 238 U. S. 299, 60 L. Ed. 297.

There is no ambiguity in the language of the statute relating to converted insurance. "Subject to regulations the insured shall at all times have the right to change the beneficiary or beneficiaries without the consent of such beneficiary or beneficiaries *but only within the classes herein provided.*"

There is no statute relating to converted government insurance such as is the subject of this litigation which permits the change of beneficiary to a person outside the permitted class, and the statute and the policy in litigation expressly prohibits such a change.

It may well be that Congress in enacting the prohibition of a change of beneficiary except to a person within the permitted class had in mind a situation exactly like this one where the change was made from a loyal wife to a lady friend of the insured.

In considering this question, the counsel for the plaintiff, requests this Honorable Court to examine the statutes as shown in the pertinent statutes of this brief rather than as such statutes appear in the U. S. Code Annotated. The editors of U. S. Code annotated have so garbled and re-arranged the various enactments, relating to War Risk Insurance, that it is almost impossible to tell the exact form in which such amendments to the statute were enacted. Several serious errors appear in the U. S. Code annotated and words have been inserted in some of the statutes by the editors which were never in any amendment enacted by Congress of the United States. In order to correctly decide the case resort must be had to the original amendments.

Counsel for the defendant, Cohen, will probably cite the case of *Lewis v. United States*, 56 Fed. (2) 563, decided by the U. S. Circuit Court of Appeals for the Third Circuit.

The express language of the statute relating to converted insurance prohibiting a change except to a person within the permitted class was apparently not called to the attention of the Court, and the Court in deciding the question referred to the reports of the

Committee handling the amendments in question. Where the language is plain as it is in this case, resort cannot be made to the Reports of Committee of Congress. Whatever was said in the reports may have been intention of some of the Committee but the fact remains that the statute was not enacted to carry out such intent. If Congress intended that any person might be designated as a beneficiary under a government converted contract, or a change might be made to any person it could have said so in language of which there could be no doubt. As stated above it may be that in prohibiting a change of beneficiary to a person without the permitted class that Congress had in mind a case exactly such as this where a change is made from the loyal and faithful wife to a lady friend of the insured. But whether Congress did or not have this situation in mind it did write into the Act of May 29, 1928, and again in the Act of July 3, 1930, that a change of beneficiary could only be made to a person within the permitted class. The statute should govern in the case and not Court decisions which ignore the express language of the statute.

Conclusion.

For the reasons herein stated, judgment in this cause should be reversed.

Respectfully,

C. L. DAWSON,
Attorney for the Appellant,
Washington, D. C.

No. 7349

**In the United States Court of Appeals
for the District of Columbia**

JANUARY TERM, 1939

EDNA JULIA SMALL, APPELLANT

v.

**UNITED STATES OF AMERICA AND ANNA EDITH
COHEN, APPELLEES**

**APPEAL FROM THE DISTRICT COURT OF THE UNITED
STATES FOR THE DISTRICT OF COLUMBIA**

**BRIEF FOR THE ^{United States}
~~APPELLANT~~**

DAVID A. PINE,

United States Attorney.

ALLEN CRENSHAW,

Attorney, Department of Justice.

JULIUS C. MARTIN,

Director, Bureau of War Risk Litigation.

WILBUR C. PICKETT,

Special Assistant to the Attorney General.

FENDALL MARBURY,

Special Attorney, Department of Justice.

INDEX

	Page
Statement of the case.....	1
Statutes and regulations and committee reports involved.....	3
Summary of argument.....	6
Argument.....	8
Conclusion.....	12

CITATIONS

Cases:

<i>Copper Queen Mining Co. v. Arizona Board</i> , 206 U. S. 474.....	11
<i>Duplex Printing Co. v. Emil J. Deering, etc.</i> , 254 U. S. 443.....	11
<i>Helvering v. Bliss</i> , 293 U. S. 44.....	12
<i>Johnson v. Manhattan Ry. Co.</i> , 289 U. S. 479.....	11
<i>Komada v. United States</i> , 215 U. S. 392.....	12
<i>Lang v. Commissioner</i> , 304 U. S. 264.....	12
<i>Lewis v. United States</i> , 56 F. (2d) 563.....	12
<i>McLean v. United States</i> , 266 U. S. 374.....	11
<i>National Lead Co. v. United States</i> , 252 U. S. 140.....	12
<i>New Haven R. R. v. Interstate Com. Com.</i> , 200 U. S. 361.....	11
<i>Northern Pacific Ry. Co. v. Washington</i> , 222 U. S. 370.....	11
<i>Taft v. Commissioner</i> , 304 U. S. 351.....	12
<i>United States v. Garrison</i> , 39 F. (2d) 225.....	12
<i>United States v. G. Falk & Brother</i> , 204 U. S. 143.....	11
<i>United States v. Hermanos y Compania</i> , 209 U. S. 337.....	11
<i>Zellerbach Co. v. Helvering</i> , 293 U. S. 172.....	12

Statutes:

Section 300 of the World War Veterans' Act, as amended by the Act of July 2, 1926, c. 723, sec. 14, 44 Stat. 790, 798-799; as amended by the Act of May 29, 1928, c. 875, sec. 13, 45 Stat. 964, 968.....	3
Section 301 of the World War Veterans' Act, as amended by the Act of June 2, 1926, c. 449, 44 Stat. 686; as amended by the Act of May 29, 1928, sec. 14, 45 Stat. 968-970.....	3

Miscellaneous:

H. Rep. No. 1881, 70th Cong., 1st Sess., Cong. Rec. Vol. 69, Part 6, p. 6574.....	4
Circular No. 496, Veterans' Bureau, 1930, R. & P., Part II, p. 1770.....	5
Regulations & Procedure, Veterans' Bureau, paragraph 3035, pp. 2-3 R.....	6

(I)

**In the United States Court of Appeals
for the District of Columbia**

JANUARY TERM, 1939

No. 7349

EDNA JULIA SMALL, APPELLANT

v.

**UNITED STATES OF AMERICA AND ANNA EDITH
COHEN, APPELLEES**

***APPEAL FROM THE DISTRICT COURT OF THE UNITED
STATES FOR THE DISTRICT OF COLUMBIA***

**BRIEF FOR THE ^{United States}
~~APPELLANT~~**

STATEMENT OF THE CASE

This suit was brought by the appellant, Edna Julia Small, the widow of an insured under a policy of United States Government life (converted) insurance, to recover death benefits under the policy. The appellant had been designated as beneficiary in the policy until April 1933, when the insured designated as the beneficiary the appellee, Anna Edith Cohen, who was not related to him, either by blood or marriage. The latter remained the beneficiary until the insured's death on August 25, 1936. The appellant claimed that such redesignation was invalid under the World War Veterans' Act, and

made Anna Edith Cohen a co-defendant with the Government.

The facts are not in dispute. The case was tried in the court below upon the sole issue of law, as stipulated by the parties (R. 7), of whether the designation of the appellee, Anna Edith Cohen, as the beneficiary was permitted by statute. The trial court held in effect that there was no statutory violation and entered judgment for Anna Edith Cohen, awarding her the death benefits provided by the policy (R. 13-16). Anna Edith Cohen and the Government were joined as appellees on this appeal.

The appellant charges no impropriety in the form or manner of the change of beneficiary, contending merely that the provisions of the World War Veterans' Act prohibited an insured under a United States Government life (converted) insurance policy from changing the beneficiary of such policy to a person in the status of Anna Edith Cohen, who was not related to the insured by blood or marriage.

The Government contends on the other hand that all restrictions as to the classes of persons who might be named as beneficiary of converted insurance, whether originally or by redesignation, were removed by the amendment to Section 300 of the World War Veterans' Act, 1924, by the Act of May 29, 1928.

The Government makes this contention in the instant case for the purpose of upholding the inter-

pretation to that effect of the Act in question, which has been followed until the present time, in administering this insurance.

**STATUTES AND REGULATIONS AND COMMITTEE
REPORTS INVOLVED**

Prior to the Act of May 29, 1928, Sections 300 and 301 of the World War Veterans' Act, both of which applied to United States Government life (converted) insurance, as well as to yearly renewable term insurance, provided in part as follows:

SEC. 300. * * *

The insurance shall be payable only to a spouse, child, grandchild, parent, brother, sister, uncle, aunt, nephew, niece, brother-in-law, or sister-in-law, or to any or all of them, and also during total and permanent disability to the injured person.

Where a beneficiary at the time of designation by the insured is within the permitted class of beneficiaries and is the designated beneficiary at the time of the maturity of the insurance because of the death of the insured, such beneficiary shall be deemed to be within the permitted class even though the status of such beneficiary shall have been changed. (Act of July 2, 1926, c. 723, sec. 14, 44 Stat. 790, 798-799.)

SEC. 301. * * *

Subject to regulations, the insured shall at all times have the right to change the beneficiary or beneficiaries without the consent of such beneficiary or beneficiaries, but only within the classes herein provided. (Act of June 2, 1926, c. 449, 44 Stat. 686.)

The Act of May 29, 1928, c. 875, sec. 13, 45 Stat. 964, 968, amended the provisions above quoted in Section 300 of the World War Veterans' Act to provide as follows:

Yearly renewable term insurance shall be payable only to a spouse, child, grandchild, parent, brother, sister, uncle, aunt, nephew, niece, brother-in-law, or sister-in-law, or to any or all of them, and also during total and permanent disability to the injured person.

Whether the beneficiary for *yearly renewable term* insurance at the time of designation by the insured is within the permitted class of beneficiaries and is the designated beneficiary at the time of the maturity of the insurance because of the death of the insured, such beneficiary shall be deemed to be within the permitted class even though the status of such beneficiary shall have been changed. [Italics supplied.]

The Act of May 29, 1928, *supra*, sec. 14, 45 Sta. 968-970, also amended Section 301 of the World War Veterans' Act, leaving unchanged the provision above quoted (45 Stat. 969).

The House Committee Report made in connection with the Act of May 29, 1928, *supra*, contained the following statement concerning the amendment of Section 300 of the World War Veterans' Act (H. Rep. 1881, 70th Cong., 1st Sess., Cong. Rec. Vol. 69, Part 6, p. 6574):

11. Section 12 amends section 300 of the act by removing the restriction on the desig-

nation of a beneficiary for converted insurance to a permitted class. The permitted class of beneficiaries will still remain in the statute insofar as yearly renewable term insurance is concerned. The committee is of the opinion that in view of the fact that the insured under converted insurance is paying an ample premium for the protection afforded he should be given the same right with regard to designating a beneficiary, or changing a beneficiary, as he would have under a commercial insurance policy. This amendment will make unnecessary the amendment providing that trustees be included among the permitted class of beneficiaries for converted insurance. There will be no additional cost attached to this amendment.

The Senate Committee Report (S. Rep. 1297) contained a substantially similar statement.

Circular No. 496 (Adjudication Service) of the Veterans' Bureau, signed by H. L. McCoy, Acting Assistant Director, as published in 1930 in Regulations and Procedure, United States Veterans' Bureau, Active and Obsolete Issues as of December 31, 1928, Part II, page 1770, provided in part as follows:

DESIGNATION OF BENEFICIARY OF UNITED STATES
GOVERNMENT LIFE INSURANCE

NOVEMBER 15, 1928.

1. Section 300 of the World War veterans' Act, 1924, as amended May 29, 1928, eliminates United States Government life

(converted) insurance from the provisions prescribing the permitted class of beneficiaries. Therefore, the insured under a United States Government life (converted) insurance policy may designate any person, firm, corporation, or legal entity as the beneficiary under his policy, either individually or as trustee.

* * * *

4. The permitted class of beneficiaries still applies to yearly renewable term insurance.

Substantially the same provisions were incorporated in paragraph 3035 of a subsequent codification of the Regulations and Procedure, Insurance Section, pages 2-3 R., which is in force and effect at the present time.

SUMMARY OF ARGUMENT

The trial court was correct in holding that the insured's designation of the appellee, Anna Edith Cohen, as the beneficiary of his insurance was permitted by statute.

1. It is clear on the face of the statutes involved that Sections 300 and 301 of the World War Veterans' Act removed the restrictions on designations of beneficiaries of United States Government life (converted) insurance, not only as to original designations, but also as to changes of beneficiaries.

(a) The mere retention in the Act of 1928 of the provision in Section 301 limiting changes of beneficiary to "the classes herein provided," on

which the appellant relies, furnishes no reasonable ground for imputing an intention thereby to include restrictions which, appellant concedes, no longer existed.

(b) Indeed, no reason exists for making the distinction urged by the appellant between original designations of beneficiaries and designations by way of change of beneficiary.

(c) The appellant's view, if adopted, would have the effect of depriving persons whom he considers within the permitted class for change of beneficiary, of the privilege enjoyed by them prior to the Act of 1928, under Section 300, of retaining their status as permissible beneficiaries, even though such status may have changed subsequent to designation.

2. Even if it were to be conceded that the statutes in question are ambiguous on this question, the Government's view is fully supported by the Congressional Committee Reports made in connection with the bill which became the Act of 1928.

3. Furthermore, the Government's view has in effect been adopted by subsequent Congresses in view of the fact that it has been followed consistently to the present time in administering this insurance without being disturbed by Congress, although Sections 300 and 301 of the World War Veterans' Act have been amended subsequent to the Act of 1928.

4. The only court decision on the question involved here supports the Government's contention.

ARGUMENT

The trial court was correct in holding that the insured's designation of the appellee, Anna Edith Cohen, as the beneficiary of his insurance was permitted by statute.

1. It is clear on the face of the statutory provisions involved that the restrictions to certain classes of the persons who might be named as beneficiaries of insurance, which were contained in Sections 300 and 301 of the World War Veterans' Act prior to the amendatory Act of May 29, 1928, *supra*, were removed by that Act with respect to United States Government life (converted) insurance, not only as applied to original designations of beneficiaries, but also as applied to changes of beneficiaries of such insurance.

The appellant virtually concedes (Br. 13-14) that the amendment of Section 300 of the World War Veterans' Act removed the restriction as to the persons who might be *originally* designated as beneficiaries, insisting merely that the restriction was continued in effect as to changes in designation. In this connection she relies solely upon the fact that when Section 300 was amended by the Act of May 29, 1928, *supra*, Congress left unchanged the provision in Section 301 which limited changes of beneficiary to persons "within the classes herein provided." It is submitted, however, that the appellant's contention is wholly unsound.

(a) The provision in question in Section 301 was obviously intended to be applicable only to yearly

renewable term insurance, in view of the fact that the restriction with respect to the beneficiaries of United States Government life (converted) insurance had been removed by the amendment of Section 300. Prior to the Act of 1928, the provision in Section 301 was plainly intended to refer to the restrictions mentioned in Section 300. Certainly the mere retention of that provision in the Act of 1928 furnishes no reasonable basis for imputing an intention thereby to change the meaning of that reference to include restrictions which were no longer mentioned in Section 300 and which no longer existed.

(b) Indeed, we are aware of no possible reason why Congress should have intended to make the distinction, urged by the appellant, between persons who might be *originally* designated as beneficiaries of Government life insurance and those who might be selected in changing the beneficiaries of such insurance. The only suggestion which the appellant makes in this connection is that Congress may have intended to prohibit a change of beneficiary from a wife to a "lady friend" of the insured (Br. 16). It is difficult to imagine, however, any reason for treating a change of beneficiary to such a person differently from an original designation of her as the beneficiary.

(c) Moreover, the appellant's view, if adopted, would have the effect of depriving such designated beneficiaries of United States Government life

(converted) insurance as are conceded by the appellant to be within the permitted classes for change of beneficiary, of the privilege enjoyed by them prior to the Act of 1928, under the provision in Section 300, *supra*, to the effect that a beneficiary who was within the permitted class at the time of his designation as beneficiary, and who remains the designated beneficiary at the time of the maturity of the insurance by the death of the insured, shall be deemed to remain within that class even though his status shall have changed meanwhile. For it should be noted in this connection that the latter provision, as well as the provision restricting the designation of beneficiaries to certain classes, was limited by the amendatory Act of 1928 to yearly renewable term insurance and, hence, was wholly inapplicable to persons who became beneficiaries of United States Government life (converted) insurance by redesignation.

2. Even if it were to be conceded that the statutory provisions in question are ambiguous concerning the view here urged by the Government, it is submitted that this view is fully supported by the Congressional Committee Reports made in connection with the bill which became the Act of May 29, 1928, *supra*, since it is obvious from these reports that the intention of Congress was to remove all restrictions upon designation of beneficiaries in United States Government life (converted) in-

surance, no exception being made or suggested therein with respect to changes of beneficiaries.¹

3. Furthermore, the Government's view as to the meaning of the provisions in question has in effect been adopted by subsequent Congresses. Despite the fact that it has been followed consistently by the Veterans' Bureau and its successor, the Veterans' Administration, in administering this insurance (see Circular No. 496 and paragraph 3035, R. & P. of the Veterans' Administration, now in force, *supra*), and by the Comptroller General (8 Comp. Gen. 107-108; *ibid.* 176-177), both Sections 300 and 301 of the World War Veterans' Act have been subsequently amended without disturbing this practice. (U. S. C. A., Title 38, Sections 511-512.) It is submitted that this amounts to a legislative adoption of the administrative view as to the meaning of the statutory provisions in question, which should not be disturbed in any event. *United States v. G. Falk & Brother*, 204 U. S. 143, 152; *Copper Queen Mining Co. v. Arizona Board*, 206 U. S. 474, 479; *United States v. Hermanos y Compania*, 209 U. S. 337, 339; *Johnson v. Manhattan Ry. Co.*, 289 U. S. 479, 500; *New Haven R. R. v. Interstate Com. Com.*, 200 U. S. 361, 401-402;

¹ Appellant does not deny that such reports may be resorted to where the statute is ambiguous. See *McLean v. United States*, 266 U. S. 374-379; *Northern Pacific Railway Company v. Washington*, 222 U. S. 370-380; *Duplex Printing Company v. Emil J. Deering, etc.*, 254 U. S. 443-474.

Komada v. United States, 215 U. S. 392, 396; *National Lead Co. v. United States*, 252 U. S. 140, 145-147; *Helvering v. Bliss*, 293 U. S. 44, 79; *Zellerbach Co. v. Helvering*, 293 U. S. 172, 179-180; *Taft v. Commissioner*, 304 U. S. 351, 357; *Lang v. Commissioner*, 304 U. S. 264, 270.

4. Furthermore, the only court decision on the question involved here supports the Government's contention. *Lewis v. United States*, 56 F. (2d) 563 (C. C. A. 3d). See also *United States v. Garrison*, 39 F. (2d) 225 (D. C. Fla.).

CONCLUSION

For the reasons stated, it is respectfully submitted that the judgment below should be affirmed.

DAVID A. PINE,
United States Attorney.

ALLEN CRENSHAW,
Attorney, Department of Justice.

JULIUS C. MARTIN,
Director, Bureau of War Risk Litigation.

WILBUR C. PICKETT,
Special Assistant to the Attorney General.

FENDALL MARBURY,
Special Attorney, Department of Justice.

SEPTEMBER 1939.

IN THE
United States Court of Appeals
FOR THE DISTRICT OF COLUMBIA.

JANUARY TERM, 1939.

—
No. 7349.
—

EDNA JULIA SMALL, *Appellant*,

v.

UNITED STATES OF AMERICA and ANNA EDITH COHEN,
Appellees.

—
Appeal From the District Court of the United States
For the District of Columbia.

—
BRIEF FOR APPELLEE, ANNA EDITH COHEN.
—

J. EDWARD BURROUGHS, JR.,
WILLIAM P. ARNOLD,
Attorneys for Appellee
Anna Edith Cohen

INDEX.

	Page
I. Statement of the Case	1-2
II. Statement of the Facts	2-4
III. The Question Involved	4
IV. The Statutes Involved	5-6
V. Summary of Argument	7
VI. Argument	7-11
VII. Conclusion	11

CITATIONS.

CASES.

Lewis v. United States, 56 F. (2d) 563 (C.C.A. 3d)	11
United States v. Garrison, 39 F. (2d) 225 (D. C. Fla.)	11

STATUTES.

Sections 300 and 301, World War Veterans' Act (43 Stat. 624, 1308)	5
Amendment of May 29, 1928, to World War Veterans' Act (45 Stat. 967)	4

MISCELLANEOUS.

Circular 496 and paragraph 3035 R. & P. of Veterans Adm.	8
H. Report #1297—70th Cong. 1st Session Cong. Record Part 6, Page 6574	10

IN THE
United States Court of Appeals
FOR THE DISTRICT OF COLUMBIA.

JANUARY TERM, 1939.

No. 7349.

EDNA JULIA SMALL, *Appellant*,

v.

UNITED STATES OF AMERICA and ANNA EDITH COHEN,
Appellees.

Appeal From the District Court of the United States
For the District of Columbia.

BRIEF FOR APPELLEE, ANNA EDITH COHEN.

STATEMENT OF THE CASE.

The sole question involved in this case is whether Anna Edith Cohen is entitled to receive from the United States of America the proceeds of United States Government *converted** insurance policy K-51672 on

* Italics supplied throughout.

the life of Nathan Houston Small in the principal sum of \$10,000 payable in installments, under which policy Anna Edith Cohen is the designated beneficiary. On the 9th day of April, 1939, appellant, the wife of Nathan Houston Small, deceased, and as the originally designated beneficiary, filed her suit against the United States of America and Anna Edith Cohen asking the Court to render judgment for her against the United States and Anna Edith Cohen. A stipulation of the facts and issue involved was filed and upon this stipulation and appropriate motions, the District Court entered judgment for Anna Edith Cohen, from which judgment this appeal was taken.

STATEMENT OF THE FACTS.

The facts agreed upon by stipulation (R., pp. 7, 8 and 9) are as follows:

“1. That Nathan Houston Small enlisted in the military service of the United States on May 21, 1918, and was honorably discharged on August 8th, 1919. That while in the military service of the United States Nathan Houston Small applied for and was granted War Risk term insurance in the amount of Ten Thousand Dollars for which the plaintiff Edna Julia Small, his wife, was the designated beneficiary.

“2. That on September 1, 1919, Nathan Houston Small, duly converted his Ten Thousand Dollar term insurance contract into a twenty payment government converted insurance contract and duly paid premiums thereon to include the month of August 1936. That at the time that Nathan Houston Small made application for said Ten Thousand Dollar converted government insurance policy he designated, the plaintiff, Edna Julia Small, his wife, as the beneficiary thereof, and that she continued to be

such designated beneficiary until the 15th day of April, 1933, when Nathan Houston Small duly requested in writing to the United States Veterans Administration a change of beneficiary under said policy to the defendant, Anna Edith Cohen, which change of beneficiary was endorsed on the said \$10,000 twenty payment government life policy of Nathan Houston Small on May 4, 1933. The said change of beneficiary provided that should the said Anna Edith Cohen survive the insured and die before receiving all of the 240 monthly instalments provided for in said policy, then in that event the remainder of said instalments should be paid to the estate of the insured as the alternate beneficiary.

“3. That the said Ten Thousand Dollar twenty payment government converted policy issued to Nathan Houston Small, contained the following language relative to change of beneficiaries under the said policy:

‘The insured shall have the right at any time, and from time to time, and without the consent or knowledge of the beneficiary, to change the beneficiary under this policy within the class permitted by the War Risk Insurance Act or any amendment or supplement thereto. Every change of beneficiary must be made by notice, signed by the insured, to the Bureau of War Risk Insurance at its office in Washington, D. C. (accompanied by the policy for an indorsement of the change thereon by the said Bureau) and shall not take effect unless such change is indorsed on the policy. After such indorsement, the change shall be deemed to have been made as of the date the Insured signed said written notice of change, whether the insured be living at the time of said indorsement, or not; provided, however, that any payment made to a beneficiary of record before notice of change of beneficiary has been received and recorded by

the said Bureau shall not be made again to the changed beneficiary. The Insured may also exercise any right or privilege given under the provisions of this policy without the consent of the beneficiary. An original designation of a beneficiary may be made by last will and testament, but a change of beneficiary made by last will and testament shall not be valid.'

"4. That prior to May 21, 1918, the Plaintiff, Edna Julia Small, and Nathan Houston Small were lawfully married and that they continued to live together as husband and wife until the death of Nathan Houston Small on August 25, 1936.

"5. That the Defendant, Anna Edith Cohen, is not now and never was related to the insured either by blood or marriage, or in any way whatsoever, nor did they or either of them stand in loco parentis toward the other.

"6. That prior to the institution of this suit, the plaintiff filed a claim for the insurance benefits sued upon herein with the Veterans Administration, and that the claim was denied and an award was made in favor of the defendant, Anna Edith Cohen.

"7. That Nathan Houston Small died on August 25, 1936 at which time premiums had been paid on the said insurance policy."

THE QUESTION INVOLVED.

Whether, after the amendment of May 29, 1928, to the World War Veterans' Act (45 Stat. 967) an insured may designate as the beneficiary of a *converted* insurance policy or change the beneficiary to a person who is not related to the insured either by blood or marriage or where neither the insured nor the beneficiary stand in loco parentis toward the other.

THE STATUTES INVOLVED.

The pertinent parts of section 300 of the World War Veterans' Act of June 7, 1924 (38 U. S. C. 511; 43 Stat. 624), as amended March 4, 1925 (43 Stat. 1308) and July 2, 1926 (44 Stat. 798), were as follows:

“In order to give to every commissioned officer and enlisted man and to every member of the Army Nurse Corps (female) and of the Navy Nurse Corps (female) when employed in active service under the War Department or Navy Department protection for themselves and their dependents, the United States, upon application to the Bureau and without medical examination, shall grant United States Government life insurance *converted* insurance against the death or total permanent disability of any such person in any multiple of \$500, and not less than \$1,000 or more than \$10,000, upon the payment of the premiums as hereinafter provided. Such insurance must be applied for within one hundred and twenty days after enlistment or after entrance into or employment in the active service and before discharge or resignation: Provided, That any member of the reserve forces whose application was accepted at a time when he was in attendance at a military or naval training camp or station, and from whom premiums were collected, and who becomes or has become totally or permanently disabled, or dies or has died, shall be deemed to have made valid application therefor. This proviso shall not authorize the granting of more than \$10,000 insurance to any one person: Provided, further, That each officer and enlisted man of the Coast Guard who is serving on active duty at the time of the passage of this amendatory Act, or who subsequent thereto enters the Coast Guard Service, shall be granted insurance in accordance with the terms of this section upon application within one hundred and twenty days of the passage of this

amendatory Act, or date of enlistment or entry into the Coast Guard, whichever is the later date, and before retirement, discharge or resignation.

“The insurance shall be payable only to a spouse, child, grandchild, parent, brother, sister, uncle, aunt, nephew, niece, brother-in-law, or sister-in-law, or to any or all of them, and also during total and permanent disability to the injured person.

“Where a beneficiary at the time of designation by the insured is within the permitted class of beneficiaries and is the designated beneficiary at the time of the maturity of the insurance because of the death of the insured, such beneficiary shall be deemed to be within the permitted class even though the status of such beneficiary shall have been changed. * * *

Section 13 of an act entitled “An Act to Amend the World War Veterans’ Act of 1924” (45 Stat. 967) approved May 29, 1928, amended Section 300 of the War Veterans’ Act to read as follows:

“The *yearly renewable term insurance* shall be payable only to a spouse, child, grandchild, parent, brother, sister, uncle, aunt, nephew, niece, brother-in-law, or sister-in-law, or to any or all of them, and also during total and permanent disability to the injured person.

“Where a beneficiary for *yearly renewable term insurance* at the time of designation by the insured is within the permitted class of beneficiaries and is the designated beneficiary at the time of the maturity of the insurance because of the death of the insured, such beneficiary shall be deemed to be within the permitted class even though the status of such beneficiary shall have been changed.”

SUMMARY OF ARGUMENT.

The determination of the District Court that the designation by the insured of the Appellee, Anna Edith Cohen, as the beneficiary of his converted insurance was correct and authorized by statute.

1. The amendment of May 29, 1928 to Sections 300 and 301 of the World War Veterans' Act removes all restrictions on designations of beneficiaries of United States Government life (converted) insurance both as to original designations and to change of beneficiaries.

2. That portion of paragraph 4 of Section 301 limiting changes of beneficiaries to "the classes herein provided" does not apply to (converted) insurance.

3. It was the intention of Congress to remove, by the amendment of May 29, 1928, the restrictions on beneficiaries under converted policies.

4. The intention of Congress has been given effect by the consistent rulings of the Bureau of War Risk Insurance and its successors.

5. The only reported cases on the question here involved support the decision of the District Court.

ARGUMENT.

The decision of the District Court holding that the appellee, Anna Edith Cohen, was the legally designated beneficiary of the United States Government *converted* insurance policy on the life of Nathan Houston Small was proper and permitted by the statute in force at the time the change of beneficiary was made. The principal changes made by the amend-

ment, *supra*, were: in the first line of paragraph two where "yearly renewable term insurance" was substituted for "the insurance" and in the first line of paragraph three, the term "for yearly renewable term insurance" was inserted so that the paragraph read in part "Where a beneficiary for yearly renewable term insurance at the time of designation by the insured is within the permitted class of beneficiaries * * *" instead of "Where a beneficiary at the time of designation by the insured is within the permitted class of beneficiary * * *." This clearly demonstrates that it was the intention of Congress to restrict the class of persons who could be named as beneficiaries only to policies on a yearly renewable basis and thus eliminate any restrictions on beneficiaries under *converted* policies.

The Bureau of War Risk Insurance and its successors have given effect to this amendment by constantly and consistently holding that the permitted class restriction applies only in the case of *term* insurance (Circular No. 496 and paragraph 3035, R. & P. of the Veterans Administration).

Appellant admits (Br., pp. 13-14) that viewing the changes made in Section 300 by the amendment of May 29, 1928, there is a basis for the contention that the restrictions on *converted* policies were omitted. However, she calls attention to Section 301 of the Act which was also amended by the amendment of May 29, 1928 (45 Stat. 968) and says that it relates to *converted* insurance with the inference that it relates entirely to *converted* insurance. Section 301 and the fourth paragraph thereof unquestionably relate to both *term* and *converted* insurance. The fourth paragraph of Section 301 is apparently quoted by appellant for the

reason that the last sentence thereof was left unchanged by the amendment, *supra*. This quoted section reads as follows:

“Subject to regulations, the insured shall at all times have the right to change the beneficiary or beneficiaries without the consent of such beneficiary or beneficiaries, but only within the classes herein provided.”

From this, appellant urges (Br., pp. 13-14) that the retention of this sentence in the law places upon *converted* policies the restrictions enumerated in paragraph 2 of Section 300. Appellant obviously ignores the fact that the quoted part of paragraph 4 was reenacted at the same time Section 300 was amended. Consequently, the term “but only within the classes herein provided” can refer only to Section 300 in its amended state, which leaves no restrictive provisions relating to *converted* policies. As further evidence of this fact, it is interesting to note that the amendment of May 29, 1928 also amended paragraph 5 of Section 301. Prior to the amendment, paragraph 5 read in part as follows:

“If no beneficiary *within the permitted class* be designated by the insured as beneficiary for *converted* insurance granted under the provisions of Article IV * * *.”

After the amendment, this paragraph read:

“If no beneficiary be designated by the insured as beneficiary for *converted* insurance granted under the provisions of Article IV * * *.”

In this amended paragraph which deals with and specifically mentions *converted* insurance we find the

elimination of all reference to *permitted class*. This absence of reference to *permitted class* illustrates that the changes in Section 300 and Section 301 were viewed together and amended in such way as to eliminate any restriction upon the right to designate a beneficiary or change a beneficiary in a *converted* policy. Whenever *permitted class* is mentioned *yearly renewable term* insurance is specifically set forth and in places where *converted* insurance is stated *permitted class* has been eliminated. Appellant contends that the last sentence in paragraph 4 of Section 301 applies to *converted* insurance and hence is subject to the restrictions contained therein. This, however, is not logical for the reason that all question of restriction on *converted* insurance was removed from Sec. 301 by the amendment to paragraph 5, *supra*.

If it be contended or conceded that there is any ambiguity created by the amendment of May 29, 1928, *supra*, it is only necessary to examine the report of the Congressional Committee considering the amendment, which is substantially the same as the report of the Senate Committee and which reads as follows:

(Report No. 1297, 70th Congress, First Session, to accompany H. R. 13039.)

“* * * Section 12 amends section 300 of the act by removing the restriction on the designation of a beneficiary for converted insurance to a permitted class. The permitted class of beneficiaries will still remain in the statute in so far as yearly renewable term insurance is concerned. The committee is of the opinion that in view of the fact that the insured under converted insurance is paying an ample premium for the protection afforded, he should be given the same right with regard to designating a beneficiary, or changing a beneficiary,

as he would have under a commercial insurance policy. This amendment will make unnecessary the amendment providing that trustees be included among the permitted class of beneficiaries for converted insurance. There will be no additional cost attached to this amendment."

From this it can be readily determined that Congress intended that the Amendment should remove the restriction so far as *converted* insurance was concerned and that they considered the amendment, which they were enacting, would accomplish this end. This precise question has been determined by the Circuit Court of Appeals for the Third Circuit in the case of *Lewis v. United States*, 56 F. (2d) 563, in which, after an analysis of the statutes and the reports of the Congressional Committees, it was said:

"From these reports it is obvious that the intention of Congress was to remove any restrictions upon designation of beneficiaries in *converted* life insurance policies."

See also *United States v. Garrison*, 39 F. (2d) 225.

CONCLUSION.

It is respectfully submitted that the judgment below should be affirmed.

J. EDWARD BURROUGHS, JR.,
WILLIAM P. ARNOLD,
Attorneys for Appellee
Anna Edith Cohen